

Message Text

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TAGS: PARM US UK UR
SUBJECT: CTB NEGOTIATIONS: ANALYSIS OF PROVISIONS OF
SEPARATE VERIFICATION AGREEMENT PERTAINING TO INITIATION
OF ON-SITE INSPECTION

CTB MESSAGE NO.224

1. THIS MESSAGE CONTAINS ANALYSIS OF THE COMPOSITE
OSI INITIATION TEXT (CTB MESSAGE NO.223) WORKED OUT BY
THE THREE DELEGATIONS.
2. THE SOVIET PROPOSAL GOING INTO THE MAY ROUND WAS
ARTICLE II OF THE SOVIET DELEGATION'S DRAFT SEPARATE
VERIFICATION AGREEMENT HANDED OVER ON MARCH 15, 1978
(REPORTED IN CTB MESSAGE NO.178). AT THE BEGINNING OF
THE MAY ROUND, THE US DELEGATION MADE ITS COUNTERPROPOSAL
(CTB MESSAGE NO.200). SHORTLY THEREAFTER, THE SOVIETS
CAME PART WAY TOWARD OUR VIEW ON SOME OF THE ISSUES IN
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A COUNTERDRAFT THAT THEY PRESENTED (CTB MESSAGE NO.204).
THE ANALYSIS IN THE REMAINING PARAGRAPHS OF THIS MESSAGE
INDICATES THE PRINCIPAL POINTS OF DIFFERENCE BETWEEN THE
DELEGATIONS AS THE MAY ROUND BEGAN, AND THE CHARACTER OF
THE SOLUTIONS EMBODIED IN THE COMPOSITE TEXT.

3. THE EVENT THAT COULD TRIGGER THE PROCESS. BOTH SIDES

AGREED THAT OSI REQUEST SHOULD BEGIN WITH CONSULTATIONS. THE SOVIETS ORIGINALLY PROPOSED THAT ONLY A "SEISMIC EVENT" COULD LEAD TO SUCH CONSULTATIONS. BECAUSE WE DID NOT WANT THE AGREEMENT TO BE SUBJECT TO THE INTERPRETATION THAT SUCH CONSULTATIONS COULD NOT TAKE PLACE WITHOUT AN APPROPRIATE SEISMOGRAPHIC RECORD, WE PRESSED FOR DELETION OF THE WORD "SEISMIC". IT HAS BEEN DELETED IN THE COMPOSITE TEXT.

4. STATEMENT OF PURPOSE OF OSI. THE SOVIETS, IN PARAGRAPH 1 OF ARTICLE III OF THEIR MARCH 15 TEXT, INCLUDED A STATEMENT OF PURPOSE OF OSI WHICH LIMITED ON-SITE INSPECTIONS TO POSSIBLE "UNDERGROUND" NUCLEAR EXPLOSIONS. WE AGREED TO INCLUDE A STATEMENT OF PURPOSE BUT PROPOSED THAT THE PURPOSE OF OSIS WAS TO ASCERTAIN WHETHER OR NOT AN EVENT WAS A PROHIBITED EXPLOSION REGARDLESS OF THE MEDIUM IN WHICH THE EVENT OCCURRED. THE SOVIETS ACCEPTED OUR FORMULATION WHICH DOES NOT CONTAIN THE LIMITING WORD "UNDERGROUND" (SEE PARAGRAPH 2).

5. PERMITTED EVIDENCE. AN ISSUE EARLIER IN THE NEGOTIATIONS WAS THE QUESTION OF WHETHER A REQUESTING PARTY COULD USE EVIDENCE OTHER THAN SEISMIC EVIDENCE AS PART OF THE FOUNDATION FOR ITS REQUEST. WE HAVE OBTAINED THIS RIGHT.

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6. REQUIRED EVIDENCE. CONSISTENT WITH THEIR ORIGINAL VIEW THAT CONSULTATIONS REQUIRED A SEISMIC EVENT, THE SOVIETS ARGUED THAT ACTUAL OSI REQUESTS COULD NOT BE MADE WITHOUT SEISMIC EVIDENCE. TO PERMIT US TO REQUEST INSPECTIONS WHERE WE HAD OTHER PHYSICAL (E.G. PHOTOGRAPHIC) EVIDENCE, BUT NO SEISMIC RECORD OF AN EVENT, WE PROPOSED THAT THE FOUNDATION OF A REQUEST COULD BE SEISMIC OR OTHER PHYSICAL EVIDENCE (THUS EXCLUDING RUMORS OR OTHER TESTIMONY UNSUPPORTED BY ANY PHYSICAL EVIDENCE). WHETHER THE LANGUAGE SHOULD PERMIT A REQUEST UNACCOMPANIED BY SEISMIC EVIDENCE HAS NOT YET BEEN RESOLVED, AS REFLECTED IN THE BRACKETS IN THE MIDDLE OF PARAGRAPH 2.

7. INCLUSION OF THE PROPOSED INSPECTION AREA IN THE OSI REQUEST. WE WANTED THE LANGUAGE TO PROVIDE THAT THE PARTY REQUESTING AN OSI SHOULD STATE THE PROPOSED INSPECTION AREA AS PART OF ITS REQUEST. THE OTHER SIDE'S RESPONSE TO THE REQUEST WOULD THEN BE MADE WITH FULL KNOWLEDGE OF THE DESIRED INSPECTION AREA, AND THE REQUESTED PARTY COULD NOT LATER CLAIM SURPRISE IN AN ATTEMPT TO DISCREDIT THE REQUEST AFTER IT HAD AGREED IN PRINCIPLE. THE SOVIETS MAINTAINED THAT THE REQUEST SHOULD STATE ONLY

THE PLACE OF THE EVENT. IN THE COMPOSITE TEXT, THE SOVIETS
ACCEPTED OUR POSITION.

8. STATEMENT OF ADDITIONAL RIGHTS AND FUNCTIONS.
SIMILARLY, WE WANT THE REQUEST TO INCLUDE A STATEMENT OF
ANY ADDITIONAL RIGHTS AND FUNCTIONS THAT THE REQUESTING
PARTY DESIRES TO ASK FOR IN ITS REQUEST. THE SOVIETS
HAVE OPPOSED SUCH A STATEMENT AT THIS STAGE OF THE
PROCEEDINGS, ARGUING THAT IT WOULD BE PREMATURE. THIS
ISSUE REMAINS UNRESOLVED, AS INDICATED BY THE BRACKETS

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AT THE END OF PARAGRAPH 2.

9. EXCHANGE OF ADDITIONAL INFORMATION. BOTH SIDES PRO-
POSED CONSULTATION BETWEEN THE PARTIES AFTER A REQUEST
HAS BEEN MADE. THE SOVIETS WANTED THE AGREEMENT TO STATE
EXPLICITLY, IN A SEPARATE PARAGRAPH, THAT THE PARTIES
SHALL CONSULT AND MAY EXCHANGE ADDITIONAL INFORMATION AT
THIS TIME. WE ACCEPTED THIS SOVIET PROPOSAL.

10. TIME FOR RESPONSE. WE PROPOSED 30 DAYS FOR THE
PERIOD WITHIN WHICH A RESPONSE TO AN OSI REQUEST WOULD BE
DUE. THE SOVIETS COUNTERPROPOSED 60 DAYS. THIS ISSUE
REMAINS UNRESOLVED.

11. FORM OF RESPONSE. THE SOVIETS WANTED THE PARTY RE-

CEIVING A REQUEST TO BE ABLE TO AGREE TO THE INSPECTION BEFORE THE DETAILED ARRANGEMENTS WERE NEGOTIATED. TO FIND A PRACTICAL SOLUTION, WE SUGGESTED A TWO-STEP APPROACH IN WHICH, IN ITS INITIAL RESPONSE, A PARTY WOULD
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SAY THAT IT IS "PREPARED TO AGREE" THAT THE OSI "SHOULD BE CARRIED OUT." THIS WOULD REFLECT THE FACT THAT THE AGREEMENT WOULD NOT BE FINAL UNTIL THE PARTIES HAD TIED DOWN THE INSPECTION AREA AND THE RIGHTS AND FUNCTIONS OF THE INSPECTORS. THE SOVIETS ACCEPTED OUR WORDING FOR THE TWO-STEP APPROACH. THUS, THE SECOND SENTENCE OF PARAGRAPH 5 INDICATES THAT THE PARTIES SHALL PROCEED WITH THE ON-SITE INSPECTION WHEN THEY HAVE AGREED ON THE AREA, THE RIGHTS AND FUNCTIONS, AND THE DATE OF ARRIVAL OF DESIGNATED PERSONNEL. UNDER THIS LANGUAGE THE REQUESTING PARTY WOULD PROCEED WITH THE INSPECTION WHEN THE PARTIES HAVE AGREED ON ANY REQUESTED ADDITIONAL RIGHTS AND FUNCTIONS. THE ASSURED RIGHTS TO BE ESTABLISHED BY THE ARTICLE ON RIGHTS AND FUNCTIONS WOULD NOT REQUIRE AD HOC NEGOTIATION.

12. LANGUAGE DESCRIBING DECISION ON OSI. THE SOVIET TEXT INDICATED THAT A REQUESTED PARTY COULD "TAKE A FAVORABLE POSITION" REGARDING AN OSI REQUEST "OR IT MAY DECIDE DIFFERENTLY." WE FOUND THIS LANGUAGE UNDESIRABLE AS HIGHLIGHTING UNNECESSARILY THE VOLUNTARY NATURE OF OSI AND CONTAINING A FLAVOR OF ARBITRARINESS. WE SUGGESTED THE MORE APPROPRIATE "WHETHER OR NOT" PHRASEOLOGY THAT HAS BEEN AGREED TO IN PARAGRAPH 4.

13. EXCLUDED SITES. THE SOVIET MARCH 15 DRAFT ACCEPTED OUR EARLIER SUGGESTION THAT THE REQUESTED PARTY BE ABLE TO SPECIFY SITES NOT SUBJECT TO INSPECTION (E.G., NATIONAL SECURITY FACILITIES). THE COMPOSITE TEXT USES THE PHRASE "SPECIFIC SITES", HELPING TO CONVEY THE IDEA THAT AREAS OF EXCESSIVE DIMENSION SHOULD NOT BE EXCLUDED. OUR EARLIER TEXT SAID THAT REASONS SHOULD BE PROVIDED FOR AN EXCLUSION. WE DID NOT PRESS THIS POINT BECAUSE, AS A PRACTICAL MATTER, WE COULD NOT EXPECT A PARTY TO
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PROVIDE MORE THAN PERFUNCTORY REASONS, SUCH AS THAT THE SITE INVOLVES "NATIONAL SECURITY."

14. SUBSTANTIATION FOR A REJECTION OF AN OSI REQUEST. IN ITS MARCH 15 TEXT, THE SOVIETS LARGELY ACCEPTED OUR

APPROACH. SPECIFICALLY THEY AGREED THAT A PARTY TURNING DOWN A REQUEST COULD BE ASKED FOR ADDITIONAL INFORMATION, COULD BE ASKED FOR RECONSIDERATION, AND COULD BE TAKEN TO THE SECURITY COUNCIL BY THE REQUESTING PARTY. THE SOVIETS HAVE NOT YET ACCEPTED OUR PROPOSAL FOR AN AGREED UNDERSTANDING, WHICH IS STILL UNDER DISCUSSION; (SEE CTB MESSAGE NO.217). THE SOVIETS WERE WILLING TO AGREE THAT A PARTY TURNING DOWN A REQUEST WOULD PROVIDE "REASONS" FOR ITS DECISION. WE INSISTED ON STRONGER LANGUAGE, AND IN PARAGRAPH 6 WE FINALLY AGREED THAT A REQUESTED PARTY SHALL "SUBSTANTIATE" ITS DECISION AND MAY BE TAKEN TO THE SECURITY COUNCIL IF IT HAS NOT PROVIDED "SUFFICIENT SUBSTANTIATION." JOHNSON

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